

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

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CHRISTINE GALLARDO

v.

JO ANNE BARNHART

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C.A. NO. C-04-009


ORDER GRANTING MOTION FOR RELIEF FROM JUDGMENT

On June 15, 2005, the United States Magistrate Judge filed her Memorandum and Recommendation in this cause (D.E. 31). After ample opportunity, no objections have been filed by either party. This Court regards such omission as each party's agreement with and acceptance of the Magistrate Judge's findings of fact and conclusions of law. Having reviewed the pleadings on file, the Court finds no clear error in the Magistrate Judge's memorandum and recommendation. *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996). This Court adopts as its own the findings and conclusions of the Magistrate Judge.

The United States has not waived sovereign immunity to the post-judgment interest on an award of attorney's fees. *Library of Congress v. Shaw*, 106 S. Ct. 2957 (1986) ("In the absence of express constitutional consent to the award of interest separate from a general waiver of immunity to suit, United States is immune from an interest award.") Circuit courts have concluded that the attorneys fee provision of the Equal Access to Justice Act "does not waive the government's sovereign immunity with

respect to interest.” *See, e.g., United States v. Aisenberg*, 358 F.3d 1327, 1346 n. 28 (11th Cir. 2004). Accordingly, Commissioner's motion for relief from judgment (D.E. 30) is granted, and the previous judgment granting post-judgment interest on attorney's fees is revoked. (D.E. 28, 29).

ORDERED this 2nd day of August, 2005.


HAYDEN HEAD
CHIEF JUDGE

